

City of Burlington By-law 68-2013

Description

A by-law to regulate planting, maintenance and preservation of trees on or affecting public property. File: 110-04-1 (RPM-9-13)

Preamble

Whereas Council deems it in the public interest to protect and preserve trees growing upon or located upon City-owned land;

And Whereas the City, pursuant to Section 135 of the Municipal Act, S.O. 2001, c. 25, may by by-law prohibit or regulate the injuring or destruction of trees;

And Whereas the City, pursuant to Section 141 of the Municipal Act, S.O. 2001, c. 25, may provide trees to the owners of land adjacent to any highway;

And Whereas the City, pursuant to Section 62(1) of the Municipal Act, S.O. 2001, c. 25, may at any reasonable time, enter upon land lying along any of its highways to inspect trees and conduct tests on trees; and to remove decayed, damaged, or dangerous trees or branches of trees if, in the opinion of the municipality, the trees or branches pose a danger to the health or safety of any person using the highway;

And Whereas the City, pursuant to Section 62(2) of the Municipal Act, S.O. 2001, c. 25, may remove a decayed, damaged or dangerous tree or branch of a tree immediately without notice to the owner of the land upon which the tree is located, if in the opinion of the employee or agent, the tree or branch poses an immediate danger to the health or safety of any person using the highway;

Now therefore the Council of the Corporation of the City of Burlington hereby enacts as follows:

Content

1.1 In this By-law:

- (a) "Arborist" means a person holding a diploma or degree from an accredited College or University which attests to the completion of the course of study of arboriculture or an Arborist as certified by the International Society of Arboriculture;
- (b) "City" as the context requires, means "The Corporation of the City of Burlington";

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- (c) “City Arborist” means the City Arborist or any designated person acting under his or her direction;
- (d) “Contractor” means a person engaged to perform a specific activity or service, on or at a particular land or premises;
- (e) “Council” means the Council for the City of Burlington and includes its successor;
- (f) “Director” means the Director of Roads and Parks Maintenance for the City and includes the Director’s designate or successor;
- (g) “Drip Line” means the outer boundary of an area on the surface of the ground directly below and which corresponds with the outer edge of the crown of the tree;
- (h) “Permit Fee” means the amount collected by the City at the time of application for a Tree Permit as may be prescribed from time to time in the City’s rates and fee schedule pursuant to the City’s approved Current Budget;
- (i) “Private Property” means land other than public property;
- (j) “Public Property” means any land or property owned by the City;
- (k) “Public Tree” means any tree all or part of which is located on Public Property;
- (l) “Tree” includes all woody vegetation, which at maturity, will reach of height of at least 3.5m;
- (m) “Tree Permit” means a permit issued by the City pursuant to section 1.9 of this by-law;
- (n) “Tree Protection Zone” means specifications describing the measures required to protect trees not designated for removal that may be impacted by the proposed works within the City of Burlington’s road allowance, as prescribed by the City’s Standard Specifications for Tree Protection and Preservation available on the city’s web site and as may be amended from time to time.

1.2 This by-law shall apply to all Trees growing or living on Public Property throughout the City of Burlington.

Authority

1.3 The Director and the City Arborist are hereby authorized to:

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- (a) plant or cause to be planted Trees on Public Property;
- (b) care for and maintain or cause to be cared for and maintained any Tree located on Public Property;
- (c) remove or cause to be removed without notice or compensation to any person, anything which, in his or her opinion, adversely affects a Tree growing or living on Public Property;
- (d) remove or cause to be removed without notice or compensation to any person any Tree or part of a Tree on Public Property which, in his or her opinion, is decayed, diseased or poses a direct and immediate threat to Public Property or to individuals using Public Property;
- (e) remove a Tree on Public Property that is of poor quality, or undesirable species whose removal is required to facilitate new street Tree plantings;
- (f) remove from Public Property any Tree of the species contained in Schedule "A" to this by-law, and as may be amended from time to time;

1.4 The City Arborist is hereby authorized to:

- (a) issue Tree Permits;
- (b) issue work orders directing as to how and when particular aspects of any authorized work is to be conducted. The authority to issue work orders shall include the authority to order a stoppage of work.

Prohibitions

1.5 No person shall:

- (a) injure, remove, disturb, damage, destroy, cut above or below ground, spray, prune, or alter in any way a Public Tree;
- (b) deposit, place, store, or maintain any stone, brick, sand, concrete, soil, or any material, equipment, or vehicles that may impede the free passage of water, air, or nutrients to the roots of a Public Tree, or perform any work within the Drip Line of a Public Tree which causes the destruction of, removal of, or injury to the Tree;
- (c) excavate any ditch, tunnel, trench, or lay any walkway or driveway, or disturb the soil on Public Property, within the Drip Line of a Public Tree;
or

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- (d) plant or place, or cause or permit the planting or placing of any Trees partially or wholly located or growing on Public Property; without first obtaining a Tree Permit from the City Arborist in accordance with section 1.9 of this bylaw.

1.6 No person shall:

- (a) fasten any sign, bill, notice, wire, rope, nail, or other object to, around, on, or through any Public Tree in any manner, or around, on or through the stakes or posts that protect such Tree;
- (b) cause or permit any gaseous, liquid, or solid substances which are harmful or toxic to any Public Tree, to come in contact with any Public Tree, or apply to a Public Tree or an area used by said Tree's root system;
- (c) set fire to or permit any fire to burn where such fire or the heat thereof will injure any portion of any Public Tree;
- (d) interfere with fences, structures, barriers delineating Tree Protection Zones, or associated signage or other protective devices around any Public Tree;
- (e) alter or change any soil levels on Public Property within the Drip Line of any Public Tree in a manner likely to cause injury to said Tree; or
- (f) climb or permit any person under their care or control to climb any Public Tree.

Trees on Private Property

1.7 Any Tree planted on Private Property, whether planted by the City or by any other person, is the property of the land owner and as such, is the owner's sole responsibility. The owner of property on which a Tree is standing shall not permit or leave the Tree or branches thereof projecting over the highway in such manner as to obstruct the reasonable and safe use of the highway.

1.8 The Director and City Arborist are hereby authorized to:

- (a) prune or cause to be pruned, without notice or compensation to any person, the branches of any Tree located on Private Property which extend over Public Property and which, in his or her opinion, are hazardous or create an unsafe condition; and
- (b) remove or cause to be removed, without notice or compensation to any person, any Tree located on Private Property which, in their

opinion, is a hazard to the safe passage of traffic and which hazard cannot be removed by any means other than removal of the Tree.

Tree Permit

- 1.9 A person seeking to undertake or do any of the activities described in paragraph 1.5 above shall apply to the City Arborist for a Tree Permit to undertake or do the specified activity.
- 1.10 An application for a Tree Permit shall include the following documents and information:
- (a) the Permit Fee; and
 - (b) a report from an Arborist in a form satisfactory to the City Arborist showing, where applicable:
 - (i) the Tree(s) to be planted, removed or injured, including the location, size and species and condition of each;
 - (ii) a proposal for the replanting or replacing of Trees that are to be removed or that will be injured by the works;
 - (iii) confirmation that the Tree Protection Zone established and maintained around any Trees on the property is in accordance with the City's Standard Specifications for Tree Protection and Preservation;
 - (iv) the minimum frequency of site inspections by an Arborist during proposed works, where applicable;
 - (v) specifications as to the goals of the work;
 - (vi) any additional relevant technical information as may be required by the City Arborist.
- 1.11 The City Arborist shall determine the appropriate conditions to attach to each Tree Permit, in accordance with sound arboriculture practice.
- 1.12 The conditions for the issuance of a Tree Permit may include, among other things:
- (a) a requirement to post securities to ensure that the performance of the work is in accordance with the conditions of the Tree Permit;
 - (b) a requirement that the authorized work be carried out under the supervision of an Arborist;
 - (c) a requirement that a Tree or Trees be replaced by a tree or trees of a certain size and species;
 - (d) a requirement that the site of the work be restored to its original condition;

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- (e) a requirement to replant or relocate a Tree or Trees;
 - (f) a requirement that a Tree Protection Zone be established around any Trees that will be preserved on the property.
- 1.13 The City Arborist may refuse to issue a Tree Permit if he or she determines that:
- (a) the proposal is for the injuring, removal or destruction of a healthy Tree;
 - (b) the methods proposed to be used or the results to be achieved are not in accordance with sound forestry practice;
 - (c) the proposal is not in accordance with sound planning, recreation, traffic management or engineering principles;
 - (d) a person or property will be adversely affected;
 - (e) a nuisance or unsightly appearance may occur;
 - (f) the subject Tree is a protected species at risk as determined by federal or provincial legislation.
- 1.14 The City Arborist may revoke a Tree Permit that has been issued:
- (a) if the terms and conditions of a Tree Permit are not complied with;
 - (b) if the specifications and recommendations in the report of the Arborist are not followed;
 - (c) if the work orders and directions of the City Arborist are not followed;
 - (d) for any of the reasons listed in Section 1.13;
 - (e) if any term of this by-law is violated by the work undertaken in connection with that Tree Permit;
 - (f) if the Tree Permit was issued because of mistaken, false or incorrect information received by the City Arborist.
- 1.15 The City is exempted from the requirements to obtain a Tree Permit under this by-law.
- 1.16 Any Tree Permit issued pursuant to this by-law shall be valid for a period of one (1) year from the date of issuance.
- 1.17 The City Arborist may issue work orders directing as to how and when particular aspects of any authorized work will be conducted. The authority to issue work orders shall include the authority to order a stoppage of work and the authority to order the proponent of the work to obtain a revised report from an Arborist.

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- 1.18 Where a Public Tree(s) is to be removed and where its removal is not required due to age, health or other reasons in accordance with sound arboriculture principles, the applicant shall plant Tree(s) with the total combined diameter being equal to or greater than that of the Tree(s) to be removed. Where the total combined diameter of the Tree(s) to be planted is less than the total combined diameter of the Tree(s) removed, Council approval will be required.
- 1.19 The City Arborist shall not issue a Tree Permit for Trees located on Public Property immediately abutting Private Property for which a development application has been submitted, until such time as the development application has been approved and Council has also approved the removal of these Trees.
- 1.20 Notwithstanding anything set out in this by-law, Council may, by resolution, direct that any Tree or Trees be protected, removed, relocated or trimmed.
- 1.21 Where any Tree located on Public Property is damaged to the degree that it must be replaced, the City Arborist may take whatever actions are required to obtain compensation for the City for the loss of the Tree.

Enforcement, remedial actions and recovery of expenses

- 1.22 The Council may from time to time appoint officers to carry out the administrative and enforcement functions of this by-law. An officer or any person acting under his/her instructions may, at any reasonable time and without a warrant, enter and inspect any lands to which this by-law applies.
- 1.23 When the City becomes aware of a contravention of this by-law by any person, the City may make an Order in writing to the person to rectify and remedy the contravention within a certain time.
- 1.24 In the event that the order in section 1.23 is not complied with by the person within the time stipulated in the notice, then the City may take such action as is necessary to rectify and remedy the contravention of this by-law at the expense of the person, and the City may send an invoice to the person of the expenses incurred by the City thereto. In the event of failure to pay the entire invoice amount within thirty (30) days of the date of the invoice, at the discretion of the City, the outstanding balance of the invoice may be added to the tax roll of the person's property as municipal taxes and collected in the same manner as municipal taxes.
- 1.25 The City may also recover all expenses owing under this by-law by a court action as a debt due to the City.

Offence

1.26 Every person who contravenes any provision of this by-law is guilty of an offence and, upon conviction is subject to the provisions of the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, as amended and any successor thereto.

Severance

1.27 Should a court of competent jurisdiction declare a part or whole of any provision of this by-law to be invalid or of no force and effect, the provision or part is deemed severable from this by-law, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its remaining terms to the extent possible under law.

Short Title

1.28 The short title of this by-law shall be “The City of Burlington Public Tree By-law”.

Repeal

1.29 The following by-laws of the City of Burlington and any amendments thereto are repealed:

By-law numbers 19-1975, and any amendments thereto and 4494.

1.30 This by-law shall come into force and take effect on the date of its passing and enactment.

1.31 After the effective date of this by-law, by-law 19-1975, as amended, shall apply only to properties where a complete Tree Permit application was received prior to the effective date of this by-law or if a Tree Permit has been issued prior to the effective date, and then only to such properties until such time as the work or actions prescribed pursuant to the Tree Permit have been completed or otherwise concluded.

Enactment

Enacted and passed this 15th day of July, 2013.

Mayor Rick Goldring _____

City Clerk Angela Morgan _____

Online version of this document does not contain signatures. Please contact City Clerk to obtain a copy of the signed original.

Schedule “A”

- (1) Populus-All Poplar species
- (2) Salix-All Willow species
- (3) Acer-Acer negundo (Manitoba Maple)
- (4) Malus-Apple (fruiting varieties)
- (5) Prunus-Cherry (fruiting varieties and ornamental)
- (6) Pyrus-Pear (fruiting varieties)
- (7) Ulmus parvifolia-Chinese Elm
- (8) Fraxinus –(ash species)